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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1964

No. 910

BURTON MERCANTILE AND GIN COMPANY, INC.,
*Petitioner*

v.

W. WILLARD WIRTZ, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR, *Respondent*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled case on November 17, 1964.

### CITATION TO OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit in the above case is reported in 338 Fed. 2d 414.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 17, 1964. The jurisdiction of this court is invoked under 28 USCA, Sec. 1254 (1).

## QUESTION PRESENTED

Are the employees of the petitioner's gin entitled to a year round exemption from the application of the Fair Labor Standards Act?

## STATUTES INVOLVED

The statutory provisions involved are Sections 13 (a) (10) and Section 13 (a) (18) of the Fair Labor Standards Act of 1938 as amended.

## STATEMENT

The petitioner, Burton Mercantile & Gin Company, is a family agricultural corporation operating rather extensively in the south end of Jackson County, Arkansas. It is engaged in the production of cotton, rice and soybeans and in the operation of elevators, rice driers and two cotton gins which are the subject of this action. While David Paul Burton is primarily responsible for the operation of the gin at Tupelo, his brother, Owen Burton, is in charge of the gin at Beedeville. The stipulations in this case show that the Burtons have interchanged their employees from place to place as work required so that the gin employees may be assigned to farm work when they are not needed at the gin and farm employees may be assigned to gin work when there is no work to be done in the fields. Not by the wildest stretch of the imagination could Burton's Gin and Store be called a sweat

shop. This simply was not the type of industry that the Fair Labor Standards Act was aimed at.

As Mr. Justice Brown said in a concurring opinion in *Maneja* v. *Waialua,* 349 U.S. 254, 75 Supreme Court 719, at page 731:

> "As I see it, the statutory definition of agriculture describes a major activity which lies beyond the outer limits of the Fair Labor Standards Act. Agriculture is not an exception carved out of the jurisdiction of the act. Congress never proposed to apply the act to agriculture. To any extent that the act impinges upon agricultural activities, those impingements are themselves exceptions to the general freedom that characterizes agricultural employment."

It is the position of the Labor Department that the cotton gin exemption to the Fair Labor Standards Act found in 29 USCA 213 (a) applies to the Burton Gin only between those periods in the year when the first and last bale of cotton has been ginned, and that it does not apply at all to the clerical employees of the gin.

The defendants contend that under Section 13 (a) (10), the Agricultural Exemption:

> "Any individual employed within the area of production (as defined by the Secretary) engaged in handling, packing . . . drying, preparing, in their raw or natural state . . . of agricultural . . . commodities for market . . ."

and Section 13 (a) (18):

> "Any employee engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities."

gives them a year round exemption for all the gin employees including the clerical employees.

In order to run a cotton gin it is necessary to clean up the gin after the last bale of cotton has been ginned to get all lint and seed out of the gin to prevent the spread of pink boll worms. This clean-up is required by the regulations of the State of Arkansas. This work must of necessity be done after the last bale has been ginned. In addition, it is necessary sometime during the spring or summer to tune up and repair the gin machinery in order that it will be in running shape when the first bale is ginned. Under the interpretation the Administrator of the Wage & Hour Division of the exemptions quoted above this clean-up and tune up work is not exempt. The petitioner urges that the clear intent of Congress's act and amendment was to exempt this work as well as the operation of the gin between the dates of the first and last bale.

The Secretary of Labor sought an injunction against the petitioner in Federal District Court of the Eastern District of Arkansas, which injunction was granted. The judgment of the District Court was appealed to the Eighth Circuit Court of Appeals.

## BASIS FOR FEDERAL JURISDICTION

Fair Labor Standards Act, 29 USCA 201, as amended.

## REASONS FOR THE ALLOWANCE OF THE WRIT

While this particular exemption of the Fair Labor Standards Act has never before been decided by a Court of Appeals, closely analogous exemptions have been considered by other circuits with results contrary to the holding in this case. In a number of cases in-

volving the fishing industry an exemption very similar to the cotton gin exemption was interpreted as exempting employees during the dormant season; ***Waller*** **v.** ***Humphreys,*** 133 Fed. 2d 193; ***McComb*** v. ***Consolidated Fisheries,*** 174 Fed. 2d 74; ***Mitchell*** v. ***Tradewinds Co.,*** 289 Fed. 2d 278.

The determination of the extent of the application of the cotton gin exemption to the Fair Labor Standards Act is a question which affects every cotton gin in the United States and to a degree the entire agriculture economy of the cotton producing areas. The United States Department of Labor has shown an intention to continue seeking injunctions such as the one in the present case and compelling cotton gin owners to comply with their interpretation of the exemption as approved by the Court of Appeals in this case.

Respectfully submitted,

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